

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**IN THE MATTER OF:**

South Mountain Blvd. TCE Site  
Mountain Top, Luzerne County, Pennsylvania

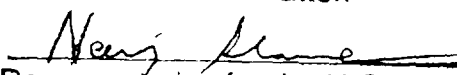
Fairchild Semiconductor Inc., a corporation,

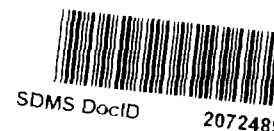
**Respondent**

Proceeding Under Sections  
106(a) and 122(a) of the Comprehensive  
Environmental Response, Compensation, and  
Liability Act of 1980, as amended  
by the Superfund Amendments and  
Reauthorization Act of 1986,  
42 U.S.C. §§ 9606(a) and 9622(a)

**Docket No. CERC-03-2005-0140DC**

I hereby certify that the  
within is a true and correct copy  
of the original Administrative  
Order filed in this matter.

  
Representative for the U.S.  
Environmental Protection Agency  
Region III



**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER  
ON CONSENT FOR REMOVAL ACTION**

The parties to this Administrative Settlement Agreement and Order on Consent ("Settlement Agreement"), Fairchild Semiconductor Inc. ("Respondent" or "Fairchild") and the United States Environmental Protection Agency ("EPA"), have agreed to the issuance of this Settlement Agreement, and the Respondent agrees to undertake all actions required by this Settlement Agreement. It is therefore agreed and Ordered, that:

**I. JURISDICTION AND GENERAL PROVISIONS**

1.1 This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622(a); delegated to the Administrator of EPA by Executive Settlement Agreement No. 12580, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the Regional Administrators of EPA by EPA delegation 1200 TN-349. The authority to issue this Settlement Agreement was further delegated by the Regional Administrator of EPA Region III to the signatory, Director, Hazardous Site Cleanup Division, by EPA Region III delegation 1200 TN RIII-132. This Settlement Agreement pertains to real property located at 125 Crestwood Drive, Mountain Top, Luzerne County, 18707

("Fairchild Property"). For the purposes of this Settlement Agreement, the Fairchild Property is considered part of the South Mountain Blvd. TCE Site ("Site"), and is further described in paragraph 3.2 below. The Site is also approximately depicted in "Attachment 1" of this Settlement Agreement.

1.2 The Respondent agrees to undertake on the Fairchild Property all actions required by, and to comply with all requirements of, this Settlement Agreement including any modifications hereto (the "Work").

1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, ("NCP"), 40 C.F.R. Part 300, and CERCLA.

1.4 The Respondent consents to and will not contest EPA's authority or jurisdiction to issue or to enforce this Settlement Agreement.

## **II. STATEMENT OF PURPOSE**

In entering into this Settlement Agreement, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to investigate and characterize the release or threat of release of hazardous substances at the Fairchild Property (as hereinafter described), by performing a groundwater characterization to determine the range of concentrations of trichloroethylene (TCE) in the groundwater beneath the Fairchild Property, and to determine the direction of groundwater flow.

## **III. FINDINGS OF FACT**

3.1 The sole owner of the property comprising a portion of the Site is the Fairchild Semiconductor Inc. ("Fairchild"). Fairchild manufactures solid state electronics. The property was acquired by Fairchild from Intersil, LLC in 2001.

3.2 The Fairchild Property is approximately 84.4 acres in size, includes a manufacturing building, warehouse, nitrogen plant, and wastewater treatment plant, and is approximately depicted on a map referred to herein as Attachment "1".

3.3 During a December 9, 2004 discussion with the EPA On-Scene Coordinator ("OSC"), employees of Fairchild stated that they believed TCE was used at the facility until the early 1990s. The TCE was said to be delivered in 55 gallon drums. The Fairchild employees could not confirm how any excess product or resulting waste was disposed of.

3.4 Fairchild is a corporation organized and existing under the laws of the State of Delaware.

3.5 Fairchild has produced sampling reports of its on-site deep production well from 1986 to 1990 upon request by EPA. The sampling was conducted by a prior owner for the Pennsylvania Department of Environmental Protection. Results show that trichloroethylene (TCE) was present in the well in concentrations ranging from 16.8 to 39.9 ppb.

3.6 On December 16 and 17, 2004, Fairchild sampled the deep production well, in addition to shallow wells located on the Fairchild Property. EPA split-sampled 5 of these wells, including the deep production well. One shallow well was frozen and unable to be sampled by Fairchild. Fairchild's analysis revealed the highest concentration to be 6.9 ppb in the deep production well. EPA's analysis showed a concentration of 6.6 ppb in this well.

3.7 Drinking water wells of four (4) residential properties, the closest of which is located approximately 600 yards from the Fairchild Property, have been found to be contaminated with TCE. TCE contamination in these wells range from 18 to 160 parts per billion (ppb) from sampling conducted on December 1 and 2, 2004, and are indicated on Attachment "1". No TCE contamination was found in a residential well located just north of these homes, thus it is believed that this well probably marks the northern boundary of the Site. Homes to the south of the homes in question appear to be connected to the municipal water line.

3.8 The Maximum Contaminant Level for TCE, established under the Safe Drinking Water Act, and promulgated pursuant to 40 C.F.R. § 141.61, is 5 ug/L.

3.9 TCE is listed as a hazardous substance at 40 C.F.R. § 302.4.

3.10 Drinking small amounts of TCE for long periods may cause liver and kidney damage, impaired immune system function, and impaired fetal development in pregnant women. Breathing small amounts may cause headaches, lung irritation, dizziness, poor coordination, and difficulty concentrating. Drinking or breathing high levels of TCE may cause nervous system effects, liver and lung damage, abnormal heartbeat, coma, and possibly death.

3.11 For the reasons listed above, on January 11, 2005 the EPA OSC determined that the release met the criteria for conducting a removal action under Section 300.415 of the NCP. This determination is documented in Special Bulletin "A" issued for the Site. Under authorities granted by the NCP, the OSC has initiated removal actions to secure safe drinking water for the affected residents.

3.12 Although sampling results of the current well regime on the Fairchild Property are well below the concentrations found in the residential wells, no direct conclusion can be drawn from the Fairchild well results due to the fact that all the wells are located at depths much different from the residential wells. The shallow wells sampled on the property are approximately 13.8 to 42 feet in depth, while the deep production well is approximately 400 feet in depth. The residential wells in question are believed to be between 100 to 200 feet in depth.

3.13 In order to adequately determine whether or not the residential wells are being contaminated from groundwater beneath the portion of the Site owned by Fairchild, additional monitoring wells are needed at depths similar to those of the residential wells in question.

#### **IV. CONCLUSIONS OF LAW**

4.1 The South Mountain Blvd. TCE Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4.2 The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4.3 TCE is a "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because it is listed at 40 C.F.R. § 302.4.

4.4 "Hazardous substances", as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been discovered and disposed of at the South Mountain Blvd. TCE Site and are currently present there.

4.5 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

4.6 (a) Respondent is an "owner or operator of a vessel or a facility" (the Fairchild Property) within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

4.7 EPA has determined that the Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). This Settlement Agreement does not constitute an admission of liability by the Respondent.

#### **V. DETERMINATIONS**

Based on the Findings of Fact and Conclusions of Law set forth above, and upon EPA's review of information for the Administrative Record, EPA has determined that:

5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

5.2 The Work is necessary to protect the public health and welfare and the environment.

5.3 Because there is a threat to public health or welfare or the environment, a removal action, consistent with section VIII of this Settlement Agreement, is appropriate to characterize and investigate the release or threat of release of hazardous substances at or from the Site.

## **VI. PARTIES BOUND**

6.1 This Settlement Agreement shall apply to and be binding upon EPA and its agents, and upon Respondent and its agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of the Respondent, nor a change in ownership or control of the Fairchild Property, shall in any way alter Respondent's responsibilities under this Settlement Agreement.

6.2 In the event of any change in ownership or control of the Fairchild Property, Respondent shall notify EPA in writing at least thirty (30) calendar days in advance of such change and shall provide a copy of this Settlement Agreement to the transferee in interest of the Fairchild Property prior to any agreement for transfer.

6.3 In the event that Respondent files for or is placed into bankruptcy, Respondent shall notify EPA within three days of such event.

6.4 The Respondent shall provide a copy of this Settlement Agreement to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondent to conduct any portion of the Work to be performed by Respondent pursuant to this Settlement Agreement. Respondent shall require in any and all contracts related to the Fairchild Property that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Settlement Agreement.

6.5 The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms of this Settlement Agreement and to execute and legally bind Respondent to this Settlement Agreement.

## **VII. NOTICE TO THE STATE**

Notice of issuance of this Settlement Agreement has been given to the Commonwealth of Pennsylvania pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION**

8.1 Respondent shall commence and complete performance of the following response action within the time periods specified herein.

8.2 Within five (5) business days of the effective date of this Settlement Agreement, Respondent shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel, and other persons who will be primarily responsible for developing the Response Action Plan ("RAP") required by this Section. Respondent shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel and other persons selected by Respondent who will conduct all or any portion of the response action no less than two (2) business days prior to commencement of the response action to be performed by such persons. Respondent shall ensure that all contractors, subcontractors, supervisory personnel and/or other persons retained to perform the response action shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondent's selection of all contractors, subcontractors, supervisory personnel and other persons who will perform the response action; the Respondent's Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondent shall notify EPA within two (2) calendar days of receipt of such EPA disapproval of the person(s) who will replace the one(s) whose selection was disapproved by EPA. If a person's selection is disapproved by EPA, that person shall not perform such specified response action.

8.3 Respondent shall develop a RAP to:

- a. Determine Shallow Groundwater Gradient - (1) Provide all existing well construction diagrams/specifications, (2) survey well heights or survey elevations (above mean sea level) on top of existing well casings, and (2) measure water table elevations in wells to determine shallow groundwater flow direction and gradient.
- b. Geophysically Log Existing Deep Well - Geophysically log deep well in order to determine soil types and water bearing zones. Existing pump will have to be removed. Methods for logging may include conductivity and temperature logs, heat pulse, and use of caliper tool, gamma detector, and/or camera with compass.
- c. Sample Relevant Water Bearing Zones in Existing Deep Well - (1) Utilize "packer" sampling to collect samples in various water bearing zones in deep well, and (2) analyze samples for volatile organic compounds ("VOCs"), semi-volatile organic compounds, and Target Analyte List ("TAL") metals.
- d. Propose Locations and Depths for Monitoring Wells - Use results of sampling in Paragraph 8.3.c., above, to determine contaminated water bearing zones, and propose at least four (4) locations for monitoring wells to adequately determine flow and concentrations both up- and down-gradient of the Fairchild Property in these zones. Respondent may conduct a file search and/or install piezometers to determine flow direction of groundwater beneath the Site prior to proposing

monitoring well locations. Base map will also have to be developed to convey locations/sampling data.

- e. Install and Sample Wells - Within sixty (60) days of approval of a RAP supplement proposing the location for monitoring wells required pursuant to paragraph 8.3(d), install and sample proposed wells. Samples shall be analyzed for VOCs, semi-volatiles, and TAL metals. Results of analysis shall be reported to EPA in the form of a Final Report within sixty (60) days of sampling. This Report shall additionally include all data from elevation surveys, well logging, and other sampling conducted in the performance of paragraphs "a" through "d" above. See Final Report discussion in Paragraph 8.11 below.
- f. Treat, and/or remove and properly dispose of off-site, contaminated water generated as a result of performing the above items (e.g. equipment and sampling-related fluids) in accordance with applicable laws and regulations;
- g. Provide site specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP") for actions to be performed at the Fairchild Property, to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel and equipment, monitoring and control of offsite migration of hazardous substances during the performance of activities at the Fairchild Property and protection of public health from exposure to hazardous substances during the conduct of activities at the Fairchild Property pursuant to this Settlement Agreement. Health and safety requirements in the HASP shall be at least as stringent as those set forth in Occupational Safety and Health Administration and EPA requirements, including but not limited to, requirements contained in 29 C.F.R. § 1910.120 and/or EPA Standard Operating Safety Guides (June 1992);
- h. If, after sampling and analysis in accordance with the RAP herein described, EPA determines it is necessary, then Respondent will obtain a Hazardous Waste Generator Identification Number; and
- i. Develop and follow an expeditious schedule for implementation of the RAP.

8.4 Within forty-five (45) calendar days of the effective date of this Settlement Agreement, Respondent shall submit to EPA for approval a RAP detailing the response action to be implemented for the items specified in paragraph 8.3 above. To the extent that information concerning the details of a particular item does not yet exist so that it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA for approval, which supplement(s) shall fully detail such items. All

references to the review, approval and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall include, among other things, a schedule for expeditious performance of the response actions required by this Settlement Agreement. The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.5 and 8.9 below.

8.5 EPA will review the RAP and notify the Respondent of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within twenty-one (21) business days of receipt of EPA disapproval or such longer time as may be specified in writing by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Settlement Agreement. Approval, disapproval and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Paragraph 8.9 below.

8.6 Within five (5) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondent shall commence implementation of such RAP and complete implementation in accordance with the RAP and the schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondent to correct or re-perform such portion of the response action pursuant to this Settlement Agreement, Respondent shall correct or re-perform such the response action or portion of the response action in accordance with a schedule provided by EPA. Any determination of deficiency that is made pursuant to this paragraph shall be memorialized in writing and provided to Respondent by U.S. mail or Email.

8.7 Beginning thirty (30) calendar days subsequent to the date of receipt of EPA approval of the RAP and every thirty (30) calendar days thereafter, or such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a progress report for each preceding thirty (30) day period or if applicable, the period specified in writing by the EPA Project Coordinator. The progress reports shall include, at a minimum: 1) a description of the response action completed and the actions that have been taken toward achieving compliance with this Settlement Agreement; 2) a description of all data anticipated and activities scheduled for the next 14 calendar days or, if applicable, the period specified in writing by the EPA Project Coordinator; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for completion of such actions; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the response action, RAP and schedule made in accordance with Section XIV of this Settlement Agreement during the reporting period.

8.8 Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Settlement Agreement, shall be sent by certified or overnight mail to the EPA Project Coordinator designated pursuant to Section IX.

8.9 All reports, plans, approval letters, specifications, schedules and attachments required by this Settlement Agreement are subject to EPA approval and shall be deemed incorporated into this Settlement Agreement upon approval by EPA. In the event that EPA approves a portion of the RAP, report or other item required to be submitted under this Settlement Agreement, the approved portion shall be enforceable under this Settlement Agreement. In the event of conflict between this Settlement Agreement and any document attached hereto, incorporated in or enforceable hereunder, the provisions of this Settlement Agreement shall control. In the event that EPA disapproves any required submission, EPA will (1) specify the deficiencies in writing, and/or (2) submit its own modifications to the Respondent to accomplish the Work outlined in paragraph 8.3 above. Respondent shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within twenty-one (21) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Settlement Agreement. In the event that EPA submits its own modifications to the Respondent, the Respondent is hereby required to incorporate such modifications. Any non-compliance with EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval, or non-compliance with an EPA-required modification shall be considered a failure to comply with a requirement of this Settlement Agreement. Determination(s) of non-compliance will be made by EPA.

8.10 In addition to the information and documents otherwise required by this Settlement Agreement, Respondent shall provide to EPA, upon written request, any and all information and documents in its possession, custody or control related to the Site including, but not limited to, Site analytical data (including raw data); Site safety data; Site monitoring data; operational logs; copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility); the identity of treatment, storage and/or disposal facilities used; the identity of transporters used; the identity of any contractors, subcontractors and supervisory personnel used; information and documents concerning Respondent's compliance with Quality Assurance and Quality Control requirements of this Settlement Agreement; information and documents relating to Respondent's efforts to secure access; and information and documents relating to any project delays. Requested information must be provided notwithstanding its possible characterization as confidential information or trade secrets. Respondent may make a claim of business confidentiality for information submitted pursuant to this paragraph in accordance with the procedures of paragraph 11.3, *infra*. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.

8.11 As discussed in 8.3(e) above, within sixty (60) calendar days of the date Respondent completes sampling of the wells in accordance with paragraph 8.3(e), Respondent shall submit a written Final Report to EPA, subject to EPA approval described in paragraph 8.9 above. The written report shall detail the work undertaken to implement the RAP and the items identified in paragraph 8.3 and shall be certified by Respondent in accordance with the terms of Section XXII

of this Settlement Agreement. EPA will review the adequacy of Respondent's implementation of the RAP and accomplishment of items specified in paragraph 8.3 above. EPA will notify Respondent, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the items identified in paragraph 8.3 and the actions required to correct such discrepancies or deficiencies. Within twenty-one (21) business days of receipt of notification by EPA, or as otherwise specified by EPA, Respondent shall, as directed by EPA, amend the Final Report, develop an additional plan or amend the existing RAP to address such discrepancies or deficiencies. Any additional plan or amendment to the RAP will be subject to the approval procedures outlined in paragraphs 8.5 and 8.9 above. Respondent shall perform all actions approved by EPA in a manner consistent with the NCP and all applicable Federal laws and regulations, as required by the NCP.

8.12 Respondent shall not handle or remove any hazardous substances generated by or encountered during the performance of the Work from the Site except in conformance with the terms of this Settlement Agreement and all applicable Federal, State and local laws, ordinances and regulations, as required by the NCP.

8.13 Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the RAP developed hereunder until receiving written EPA approval to proceed pursuant to paragraph 8.6.

8.14 Respondent shall immediately notify EPA's Project Coordinator and the National Response Center [(800) 424-8802] and any other party required by law in the event of any action or occurrence during the pendency of this Settlement Agreement which causes or threatens to cause an additional release of hazardous substances, pollutants or contaminants on, at or from the Site, or which may create a danger to public health, welfare or the environment.

8.15 In the event that EPA believes that response actions or other activities at the Site by the Respondent are causing or may cause a release or potential release of hazardous substances, or are a threat to public health or welfare or to the environment, EPA may, in its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such actual or potential releases or threats of release.

## **IX. DESIGNATED PROJECT COORDINATORS**

9.1 Respondent shall designate a Project Coordinator and shall notify EPA of such designation no later than five (5) calendar days after the effective date of this Settlement Agreement. Designation of a Project Coordinator shall not relieve Respondent of its obligation to comply with the requirements of the Settlement Agreement. The Respondent's Project Coordinator shall be a technical and/or managerial representative of the Respondent and may be a contractor and/or consultant; provided, however, the Respondent's Project Coordinator shall not be its legal representative in this matter. The Project Coordinator for EPA designated pursuant to this

Section and the Project Coordinator for the Respondent shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondent and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Settlement Agreement, including plans, reports, approvals and other correspondence, shall be directed to the Project Coordinators.

9.2 The Project Coordinator for EPA is:

Neeraj (Raj) Sharma  
On-Scene Coordinator  
U.S. Environmental Protection Agency  
Removal Enforcement and Oil Section (3HS32)  
1650 Arch Street  
Philadelphia, PA 19103

(215) 814-3260 phone  
(215) 814-3254 fax

9.3 Respondent shall have the right to change its Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.

9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to Respondent. EPA's intent is to notify the Respondent as soon as practicable following any such change of its Project Coordinator.

9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.

9.6 The EPA Project Coordinator shall have the authority to halt or modify Work or other activities performed by Respondent at the Site in order to eliminate a release or threat of release of hazardous substances. Such direction by the EPA Project Coordinator may be given verbally or in writing. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

## **X. QUALITY ASSURANCE**

The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the following documents while conducting all sample collection and analysis activities required by this Settlement Agreement:

(a) "EPA NEIC Policies and Procedures Manual" (EPA Document 330/9-78-001-R (revised August 1991));

(b) "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," (QAMS-005/80 (December 1980)); and

(c) "QA/QC Guidance for Removal Activities," (EPA/540/G-90/004 (April 1990)).

The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. Such consultation shall be in the form of a progress report from Respondent to EPA indicating compliance with the above referenced quality assurance, quality control, and chain of custody procedures. The Respondent shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

#### **XI. ACCESS, RECORDS, & CONFIDENTIALITY**

11.1 As of the effective date of this Settlement Agreement, Respondent shall provide to EPA and its employees, agents, consultants, contractors and other authorized and/or designated representatives, for the purposes of overseeing the Work, access to all property owned or controlled by Respondent wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct all activities described in paragraph 11.2 of this Settlement Agreement.

11.2 To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than the Respondent, the Respondent shall use its best efforts to obtain Site access agreements from the present owners. Such access agreements shall be finalized as soon as practicable but no later than 14 calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for the Respondent and their employees, agents, consultants, contractors and other authorized and designated representatives to conduct the work, and for EPA and its designated representatives to conduct the activities outlined in paragraph 11.3 below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access. Respondent shall reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP.

11.3 In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is

being performed at all reasonable times for the purposes of, inter alia: inspecting Work, records, operating logs and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Settlement Agreement; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, in any way pertaining to the Work.

11.4 Respondent may make a claim of business confidentiality for information submitted pursuant to this Settlement Agreement in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to Respondent.

11.5 The Respondent may withhold those records and documents covered by any privilege or protection recognized under federal law and applied by federal courts in actions commenced by the United States. In the event that the Respondent withholds a document as privileged, the Respondent shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s) and addressee(s)/recipient(s), a description of the nature of the document and identification of the privilege asserted at the time such document would otherwise be required to be provided to EPA.

11.6 No claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Settlement Agreement including, but not limited to, sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site. Nor shall such claims be made for analytical data; Site safety data; Site monitoring data; operational logs; hazardous waste manifests; identities of treatment, storage and/or storage facilities used; identities of transporters used; identities of any contractors or subcontractors used in performing work required by this Settlement Agreement.

11.7 Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

## **XII. DISPUTE RESOLUTION**

12.1 Except as provided elsewhere in this Settlement Agreement, if the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this

Settlement Agreement, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) calendar days of receipt of such notification or action. Said notice shall set forth the specific points of the dispute, the position Respondent is maintaining should be adopted as consistent with the requirements of this Settlement Agreement, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. Receipt by EPA of such notification shall constitute "initiation of Dispute Resolution procedures" for the purposes of this Settlement Agreement.

12.2 EPA and the Respondent shall have thirty (30) calendar days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this thirty (30) day period, EPA will provide a written statement of its decision to the Respondent. Receipt of such statement of decision by Respondent shall constitute "resolution" of the dispute as that term is used in this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section XII.

12.3 Following resolution of the dispute, as provided by this Section XII, Respondent shall perform the Work that was the subject of the dispute in accordance with the agreement reached or EPA's decision.

12.4 The existence of a dispute and EPA's consideration of matters placed into dispute shall not excuse, toll or suspend any compliance obligation or deadline required pursuant to this Settlement Agreement during the pendency of the dispute resolution process. In addition, the existence of a dispute under this Section shall not expand the time frame for completing particular tasks under this Settlement Agreement. Thus, in the event the Respondent prevails in the dispute, the task must be completed in the remaining amount of time originally specified in the Settlement Agreement unless the time frame is formally modified through the dispute resolution process.

12.5 Notwithstanding any other provision of this Settlement Agreement, no action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

### **XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES**

13.1 For each day, or portion thereof, that Respondent fails to comply with any requirement of this Settlement Agreement at the time and in the manner set forth herein, the Respondent shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the "Hazardous Substance Superfund" and shall be transmitted to:

U.S. Environmental Protection Agency, Region III  
Attention: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

Payment shall be made by cashier's or certified check within thirty (30) calendar days of receipt of demand. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty day period pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). A copy of the transmittal letter shall be sent simultaneously to the EPA Project Coordinator at the address identified in Section IX of this Settlement Agreement and to: EPA Region III Hearing Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103.

13.2 Stipulated penalties shall accrue in the amount of \$2,500 per calendar day per violation. Neither the accrual of nor demand for stipulated penalties set forth in this Section XIII shall preclude EPA from pursuing other penalties or sanctions available to EPA for Respondent's failure to comply with the requirements of this Settlement Agreement.

#### **XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY**

14.1 The Respondent, through its Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Settlement Agreement. Such notification shall be made verbally as soon as possible but not later than two (2) calendar days after Respondent becomes aware or should have become aware of any such delay or anticipated delay, and in writing no later than ten (10) calendar days after Respondent becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by the Project Coordinator in accordance with Section XXII of this Settlement Agreement and shall fully describe the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent and/or minimize further delay; and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall ensure that its Project Coordinator provides Respondent with immediate notification of any project delays. The Respondent shall adopt all reasonable measures to avoid and minimize such delay.

14.2 To the extent Respondent intends to claim that any delay or anticipated delay described by Respondent in accordance with paragraph 14.1 was or will be caused by circumstances beyond its control, Respondent shall, within fourteen (14) calendar days after Respondent becomes aware, or should have become aware, of such delay or anticipated delay, submit to EPA a "Notice of Force Majeure" in which Respondent fully demonstrates that the delay was caused by circumstances beyond its control which could not have been overcome by due diligence, the necessity of the proposed length of the delay, and that the Respondent took and is taking all reasonable measures to avoid and minimize delay. The Respondent shall have the burden of

proving these facts to EPA. Any "Notice of Force Majeure" shall be certified by a responsible official of Respondent pursuant to paragraph 22.1(b) of this Settlement Agreement.

14.3 Any such delay that EPA determines (1) has resulted or will result from circumstances beyond the control of the Respondent and (2) that could not and cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of Respondent's obligation(s) under this Settlement Agreement, and shall not subject Respondent to stipulated penalties under this Settlement Agreement for that particular delay. In such event, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the requirements of this Settlement Agreement or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent. Delay in one item or component of Work or the RAP does not justify delay in timely achievement of other items or components. Each delay must be separately addressed and substantiated according to the provisions of paragraphs 14.1 and 14.2 above.

14.4 Failure of the Respondent to comply with the notice requirements of paragraphs 14.1 and 14.2 above shall constitute a waiver of the Respondent's right to invoke the benefits of this Section with respect to that event.

14.5 In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Settlement Agreement has been or will be caused by circumstances beyond the control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII (Dispute Resolution) of this Settlement Agreement.

## **XV. RESERVATION OF RIGHTS**

15.1 Except as expressly provided in this Settlement Agreement, (1) each party reserves all rights, claims, interests and defenses it may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, including the right to seek injunctive relief and/or the imposition of statutory penalties.

15.2 As provided by this Settlement Agreement, EPA expressly reserves its right to disapprove of Work performed by Respondent; to halt Work being performed by Respondent if Respondent has not complied with an approved RAP or this Settlement Agreement, or at any time EPA deems necessary to protect public health, welfare or the environment and to perform such Work; to request and require hereunder that Respondent correct and/or re-perform any and all Work disapproved by EPA; and/or to request or require that Respondent perform response actions in addition to those required by this Settlement Agreement. Further, EPA reserves the right to undertake response action at any time EPA deems appropriate. In the event EPA requires Respondent, and Respondent declines, to correct and/or re-perform work that has been

disapproved by EPA and/or to perform response actions in addition to those required by this Settlement Agreement, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take any other action authorized by law.

15.3 EPA reserves the right to bring an action against the Respondent for recovery of all recoverable costs incurred by the United States related to this Settlement Agreement which are not reimbursed by the Respondent, as well as any other costs incurred by the United States in connection with response actions conducted at the Site.

15.4 This Settlement Agreement concerns certain response actions (Work described in Section VIII, above) concerning the Site. Such response actions might not fully address all contamination at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Settlement Agreement. EPA reserves all rights including, without limitation, the right to institute legal action against Respondent and/or any other parties in connection with the performance of any response actions not addressed by this Settlement Agreement.

15.5 Nothing in this Settlement Agreement shall limit the authority of the EPA On-Scene Coordinator as outlined in the NCP and CERCLA.

## **XVI. OTHER CLAIMS**

16.1 Nothing in this Settlement Agreement shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation not bound by this Settlement Agreement for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Site.

16.2 This Settlement Agreement does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

16.3 By consenting to the issuance of this Settlement Agreement, the Respondent waives any claim to reimbursement it may have under Sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612.

## **XVII. OTHER LAWS**

17.1 All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State and Federal laws and regulations, as required by the NCP.

17.2 Nothing herein shall relieve Respondent from any obligations it has under any applicable local, State, or Federal law or regulation.

## **XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

18.1 The effective date of this Settlement Agreement shall be the date on which it is signed by EPA.

18.2 This Settlement Agreement may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.

18.3 Any reports, plans, specifications, schedules, or other submissions required by this Settlement Agreement are, upon approval by EPA, incorporated into this Settlement Agreement. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Settlement Agreement and will subject the Respondent to the requirements of Section XIII (Delay in Performance and Stipulated Penalties), above. Determinations of non-compliance will be made by EPA.

18.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or other submissions by the Respondent or the requirements of this Settlement Agreement will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Settlement Agreement, and to comply with the requirements of this Settlement Agreement unless formally modified.

## **XIX. LIABILITY OF THE UNITED STATES GOVERNMENT**

Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors or consultants in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out the Work.

## **XX. INDEMNIFICATION AND HOLD HARMLESS**

Respondent agrees to indemnify and hold harmless the United States, its agencies, departments, agents, officers, employees and representatives from any and all causes of action caused by any acts or omissions of Respondent or its contractors in carrying out the work required by this Settlement Agreement.

## **XXI. CERTIFICATION OF COMPLIANCE**

21.1 (a) Unless otherwise required by the terms of this Settlement Agreement, any notice, report, certification, data presentation or other document submitted by Respondent under or pursuant to this Settlement Agreement which discusses, describes, demonstrates or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Settlement Agreement shall be certified by the Respondent, a responsible official of the Respondent or by the Project Coordinator for the Respondent. The term "responsible official" means: a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.

(b) The written Final Report required by paragraph 8.11 of this Settlement Agreement, any written notification described in paragraph 12.1 of this Settlement Agreement and any "Notice of Force Majeure" described in paragraph 14.2 of this Settlement Agreement shall be certified by the Respondent or a responsible official of Respondent.

21.2 The certification required by paragraph 21.1 of this Settlement Agreement shall be in the following form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

21.3 Submission of documents pursuant to this Settlement Agreement which are found by EPA to contain false information shall constitute a failure to comply with this Settlement Agreement and shall subject Respondent to, among other things, stipulated penalties whether or not the document has been certified.

## **XXII. SHIPMENT OF HAZARDOUS SUBSTANCES**

22.1 Respondent shall, prior to any off-site shipment of hazardous substances generated by or encountered during performance of the Work from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the requirement to notify EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. Notifications to States in those circumstances shall be governed by applicable state law.

22.2 The notification required by paragraph 22.1 shall be in writing and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation of the hazardous substances. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.

22.3 The identity of the receiving facility and state will be determined by Respondent. Respondent shall provide all relevant information, including information required by paragraph 22.1, above, relating to the off-site shipments as soon as practicable but no later than one (1) business day before the hazardous substances are actually shipped.

## **XXIII. RECORD RETENTION**

23.1 Respondent shall preserve all documents and information relating to the Work performed under this Settlement Agreement, or relating to the hazardous substances found at or released from the Site, for six (6) years following completion of the response action required by this Settlement Agreement. In addition, Respondent shall also retain, as appropriate, monthly reports on analytical services pursuant to OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to Potentially Responsible Party-Lead Superfund Sites," (July 6, 1992). At the end of this six-year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such non-privileged documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA.

#### **XXIV. DEFINITIONS**

24.1 "Business days" as used in this Settlement Agreement shall mean every day of the week except Saturdays, Sundays and federal holidays.

24.2 "Calendar days" as used in this Settlement Agreement shall mean every day of the week, including Saturdays, Sundays and federal holidays.

24.3 "Days" as used herein shall mean "calendar days" unless specified otherwise.

24.4 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.

#### **XXV. NOTICE OF COMPLETION**

25.1 When EPA determines, after EPA's review and approval of the Final Report required pursuant to paragraph 8.11 of this Settlement Agreement, that all response action specified in Section VIII of this Settlement Agreement has been fully performed, and upon receipt of any costs and penalties assessed by EPA, with the exception of any continuing obligations required by this Settlement Agreement, including those requirements specified in Sections XV ("Reservation of Rights"), XVI ("Other Claims"), XIX ("Liability of the United States"), XX ("Indemnification and Hold Harmless"), and XXIV ("Record Retention"), EPA will provide a notice of completion to the Respondent regarding all aspects of the Work other than the continuing requirements of this Settlement Agreement.

#### **XXVI. COVENANT NOT TO SUE BY EPA**

26.1 In consideration of the actions that Respondent will perform under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for the Work performed under this Settlement Agreement. This covenant not to sue shall take effect upon the Effective Date of this Settlement Agreement and is conditioned upon Respondent's complete and satisfactory performance of all obligations under this Settlement Agreement. This covenant not to sue extends only to Respondent and does not extend to any other person.

**XXVII. CONTRIBUTION**

27.1 The parties agree that this Settlement Agreement constitutes an administrative settlement for the purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from the contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement is the Work.

27.2 The Parties agree that this Settlement Agreement constitutes and administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has resolved its liability to the United States for the Work.

27.3 Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Settlement Agreement for indemnification, contribution, or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, U.S.C. §§ 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

**FOR THE RESPONDENT:**

BY: Jose T. Pardo (signature) DATE: 8-3-05

Name: Jose T. Pardo

Title: Associate General Counsel

**FOR THE EPA:**

BY: Abraham Ferdas

Abraham Ferdas, Director  
Hazardous Site Cleanup Division  
Region III  
U.S. Environmental Protection  
Agency

DATE: 8/30/05



START Team - EPA Region 3  
Wheeling, West Virginia

TDD No. SW3-04-12-0003  
JOB No. 001262.0491.010F  
CPA/START Contract No. 00-03-00-01

# South Mountain Boulevard TCE - RA Mountain Top, Luzerne County, Pennsylvania

430 215 0 430 Feet



Map By:  
BTB

Date Modified:  
4/7/05

Scale: 1:4,365



## SOURCE:

Aerial photography 3.75 minute by 3.75 minute DOQQs downloaded from source points and other White House West SE, White House NW, Franklin ME, White House East SW, all 402 Remote coordinates generated using a Garmin GPS 100 Handheld GPS unit. All roads and waterways from ESRI, 2002. Reference points based on GPS data and visual interpretation.

## NOTE:

Due to limited satellite coverage and extreme topography some displayed sample locations were adjusted using a combination of a GPS unit, photographs, and documentation.